

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**Rafik BOUGHADOU and
Andrea CASSELL,**

Plaintiffs,

v.

**UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES (“USCIS”),**

Defendant.

No. 11-cv-4384

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. Rafik Boughadou and Andrea Cassell bring this action for injunctive and declaratory relief under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, the Administrative Procedures Act, 5 U.S.C. §§ 702-706 and the Mandamus Act, 28 U.S.C. § 1361. They seek the disclosure and release of agency records improperly withheld by defendant United States Citizenship and Immigration Services (“USCIS”) and personal access to the record of proceedings contained in the defendant’s administrative file. They also ask the Court to order USCIS to forward the appeal of the denial of his immigrant visa petition to the Board of Immigration Appeals without further delay.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 702, and 28 U.S.C. § 1361. This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

The Parties

3. Plaintiff Rafik Boughadou is a resident of Cook County, Illinois. He is a citizen and national of Algeria and is married to Andrea Cassell, a United States citizen. Mr. Boughadou applied for lawful permanent residence in the United States based on his marriage nearly seven years ago and continues to pursue this application.

4. Plaintiff Andrea Cassell is a resident of Cook County, Illinois. She is a citizen of the United States and is married to Rafik Boughadou. In 2004, she filed a visa petition to classify her husband as an immediate relative of a U.S. citizen based on their marriage.

5. Defendant USCIS is an agency of the Executive Branch of the United States Government, within the United States Department of Homeland Security (“DHS”). It is responsible for deciding applications for permanent residence and has possession and control over the records that Mr. Boughadou and Ms. Cassell seek. It is also responsible for deciding immigrant visa petitions and for forwarding appeals of those decisions to the Board of Immigration Appeals for adjudication.

Factual and Procedural History

6. Mr. Boughadou and Ms. Cassell married on August 18, 2004. A month later, Ms. Cassell filed Form I-130, a petition for an immigrant visa, on behalf of her husband. At the same time, Mr. Boughadou filed an application to adjust his status to a permanent resident based on his marriage to Ms. Cassell.

7. Over the next six or so years, USCIS issued two Notices of Intent to Deny Ms. Cassell’s petition, based on its claim that it had derogatory information in its files that supposedly called into question whether the Mr. Boughadou and Ms. Cassell had married in good faith. Mr. Boughadou and Ms. Cassell, through counsel, submitted written requests on November 17, 2009, February 8, 2010, and August 18, 2010, to review the administrative record in order to fully respond to USCIS’s allegations.

8. USCIS did not act on or respond to Mr. Boughadou's and Ms. Cassell's repeated requests to review the record. Instead, on May 2, 2011, USCIS denied Ms. Cassell's I-130 petition and Mr. Boughadou's application for adjustment of status. Ms. Cassell timely filed a notice of appeal of this decision with the Board of Immigration Appeals on May 24, 2011. As required by law, she delivered this notice of appeal to USCIS's Chicago Field Office, which must now forward the appeal to the Board of Immigration Appeals for an appellate decision. USCIS has not yet informed her that it has forwarded the notice of appeal to the Board.

9. On November 19, 2009, Mr. Boughadou filed a FOIA request with USCIS for all records relating to him. The request included an express waiver of privacy concerns signed by Mr. Boughadou's wife, Ms. Cassell. A few days later, USCIS acknowledged receipt of the request.

10. USCIS failed to timely act on Mr. Boughadou's FOIA request. On January 27, 2010, having still received no documents from USCIS, he filed an administrative appeal with USCIS's FOIA appeals office in Washington, D.C.

11. Mr. Boughadou then received a disc containing the USCIS's response to his FOIA request, but it was damaged and could not be read. Mr. Boughadou informed USCIS that the disc was damaged shortly after receiving it. After waiting five months for a new disc, Mr. Boughadou followed up with USCIS by a letter dated August 16, 2010. Ten days later, USCIS sent Mr. Boughadou a new, undamaged disc.

12. The new disc contained a letter from USCIS explaining that it had identified 468 pages of documents responsive to Mr. Boughadou's request but was withholding 104 pages of those documents in whole or in part under the FOIA exemptions in 5 U.S.C. §§ 552(b)(2), (b)(5), (b)(6), (b)(7)(C), and (b)(7)(E).

13. USCIS did not provide Mr. Boughadou with a log or index describing the withheld material. But some of the withheld portions of documents appear to contain the personal information of Ms. Cassell and to be withheld solely to protect her privacy even

though Ms. Cassell signed a waiver of privacy concerns which Mr. Boughadou submitted with his FOIA request. The USCIS also did not provide documents that appear to have formed the basis of the defendant's allegation that it had derogatory information about Mr. Boughadou's and Ms. Cassell's marriage.

14. In October 2010, Mr. Boughadou filed a second administrative appeal with USCIS, this time challenging their decision to withhold over 100 documents relevant to his FOIA request. In March 2011, USCIS released an additional 24 pages, but continues to withhold significant numbers of documents.

Count I – Freedom of Information Act

15. USCIS's failure to disclose the withheld and partially withheld documents violates the FOIA. There is no lawful basis for withholding these documents.

16. Mr. Boughadou has exhausted his administrative remedies for obtaining these documents as described in paragraphs 9-14.

Count II- Administrative Procedures Act and Mandamus Act

17. USCIS's failure to permit Mr. Boughadou and Ms. Cassell or their counsel to review the record of proceedings before issuing a decision on Ms. Cassell's I-130 visa petition violated 8 C.F.R. § 103.2(b)(16), which provides: "Inspection of evidence. An applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision...."

18. USCIS has a clear duty to provide Mr. Boughadou and Ms. Cassell an opportunity to inspect the evidence it claims is in its administrative file.

19. The plaintiffs have exhausted their administrative remedies as described in paragraphs 7-8.

Count III – Mandamus Act

20. Ms. Cassell's I-130 petition has been subject to non-final administrative proceedings for almost seven years, an unreasonable length of time. Based on information and belief, the Board of Immigration Appeals will not issue a decision on Ms. Cassell's appeal for another one to two years *after* it receives the administrative record from USCIS. USCIS has a clear duty to forward the appeal challenging the denial of Mr. Boughadou's I-130 to the Board of Immigration Appeals.
21. USCIS has not yet forwarded the appeal and no other remedy at law exists.

Request for Relief

WHEREFORE, Mr. Boughadou and Ms. Cassell pray that this Court:

- A. order USCIS to disclose the requested records in their entirety and make copies available to them;
- B. declare USCIS's refusal to provide access to the evidence to be in violation of its regulations;
- C. order USCIS to provide the plaintiffs with access to the administrative file and record of proceeding at this time;
- D. order USCIS to immediately forward the appeal of the denial of Ms. Cassell's I-130 to the Board of Immigration Appeals;
- E. award costs and reasonable attorneys' fees incurred in this action; and
- F. grant such other relief as the Court may deem just and equitable.

Respectfully submitted,

s/Scott D. Pollock
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